IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R.

BHAGWANA RAM CHOUDHARY. V. RAJASTHAN PUBLIC SERVICE COMMISSION & ANOTHER.

S. B. CIVIL WRIT PETITION NO.4482/2005,
under Articles 226 & 227 of the Constitution of India.

DATE OF ORDER: OCTOBER 20, 2005.

PRESENT

HON'BLE MR. JUSTICE R.P.VYAS

Mr.Girish Joshi, for Petitioner.
Mr.J.P.Joshi, for Respondents.

BY THE COURT:

REPORTABLE.

In this writ petition, the petitioner has prayed that the respondents may be directed to allow the petitioner to appear in the interview, as the interview – process is undergoing and if the interview – process is over, then the respondents may be directed to constitute a Committee to interview the petitioner and if the name of the petitioner appears in the merit list, then

he may be assigned appropriate services. He has also prayed that the order dated 12.7.2005 may be quashed and set aside.

Brief facts giving rise to the instant petition are that in response to an advertisement dated 6.4.2003 published by the Rajasthan Public Service Commission (for short, the RPSC'), inviting applications for examination of selection to various State and Subordinate Services, the petitioner applied in the prescribed application form. In the application form, the petitioner has mentioned that he belongs to Other Backward Class (OBC) category. Thereafter, the petitioner cleared the Preliminary Examination and he was permitted to take the Main Examination. The petitioner cleared the Main Examination. On 7.6.2005, the petitioner was informed by the RPSC that he has been declared provisional successful in the Main Examination and his personality and viva-voce test will be held on 25.6.2005 at 9.30 A.M. at the Commission Office, Ajmer. He was also directed to bring all the original documents along with the latest passport size photographs. After receiving the interview call, the petitioner applied for OBC certificate which, according to the petitioner, was issued on 22.6.2005.

It is further averred in the instant petition that on 20.6.2005, the petitioner received a telegram from the RPSC

that result for R.A.S. Examination, 2003 was declared under Category OBC, NGE. After scrutiny of the application form of the petitioner, it was found that he is only eligible under GEN. NGE category and as a result of cut off marks fixed for the GEN, NGE category candidates, he was was found unsuccessful for the interview, therefore, he need not come for interview, scheduled to take place on 25.6.2005. Apart from that, the petitioner has not attached OBC certificate with the Form duly filled up by him. However, thereafter, the petitioner made an application that due to certain contingencies, he has not filed OBC certificate, but the same shall be filed during the interview. The application of the petitioner was rejected vide letter dated 12.7.2005 (Annexure 6).

Being aggrieved by the letter dated 12.7.2005 and the above mentioned facts and circumstances, the petitioner preferred the instant petition .

It is submitted by the learned counsel for the petitioner that RAS and RTS Examinations, 2003 are conducted under the Rajasthan State & Subordinate Services (Direct Recruitment by Combined Competitive Examinations) Rules, 1999 (hereinafter referred to as the 'the Rules, 1999'). Rule 11 deals with the Admission to the Examination, which reads as under :-

"11.**Admission to the Examination :-** (1) Any person may apply to be admitted as a candidate for appearing at the preliminary Examination for any one or more of the Posts/Services specified in the Notice for which he/she is eligible and in such case only one application and one payment of fee shall be sufficient. Those of the candidates who qualify at the main examination to be summoned by the Commission for an interview shall be required to indicate in the printed application form their preference for the Posts/Services for which he/she would like to be considered for allotment on the date of interview of the concerned candidates.

(2) The eligibility, including factors relating nationality, and training of a candidate for admission to the examination for appointment to a particular post in a service shall be considered in accordance with the provisions contained in the rules in that behalf relating to that particular service.

(3) The applications which are found to be incomplete and have not been filled in accordance with the instruction issued by the Commission shall be rejected by them at the initial stage. The Commission shall permit rest of those candidates to appear in the examination provisionally to whom they consider it proper to grant the certificate of admission. No candidate shall be admitted to an examination unless he holds a certificate of admission to that examination granted by the Commission. Before appearing at the examination, it should be ensured by the candidate himself/herself that he/she fulfills the condition in regard to age, educational qualifications, experience, if any, etc. as provided in the Rules. Being allowed to take the examination shall not entitle the candidate to presumption of eligibility. The Commission shall scrutinise later on the applications of such candidates only as qualify in the written

> examination and shall call only the eligible candidates to viva-voce, if any.
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> (4) The decision of the Commission as to the admission of a candidate to an examination, eligibility and consequent admission to viva-voce, if any, shall be final.
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> (5)Notwithstanding anything contained about the calculation of age in any rule governing direct recruitment through the agency of the Commission to the post in the State Services and in the Subordinate Services mentioned in Schedule I and Schedule II respectively, the age shall be calculated as on the first day of January next following the last date fixed for receipt of applications."

It is further submitted by the learned counsel for the petitioner that the request of the petitioner was wrongly turned down by the letter dated 12.7.2005 issued by the RPSC on the ground that now, it is not possible for Commission to change the category. The petitioner being an OBC category candidate, has requested the RPSC that due to certain contingencies, he has not submitted his OBC certificate, but the same shall be produced by him at the time of interview. It is submitted that the petitioner was required to produce all the original documents on 25.6.2005.

It is also submitted by the learned counsel for the petitioner that even if it is assumed that the caste certificate is

required to be submitted along with the application form under the Rules, then the procedural rules are directory in nature and these Rules cannot be interpreted in such a manner so as to divest the petitioner from appearing in the interview.

In support of his contentions, learned counsel for the petitioner has placed reliance on Shri Krishan v. The Kurukshetra University, Kurukshetra (AIR 1976 SC 376) and Charles K.Skaria v. C.Mathew (1980) 2 SCC 752.

In Shri Krishan's case (Supra), it was held by their Lordships of the Supreme Court that once a candidate is allowed to take the examination, rightly or wrongly, then the statute which empowers the University to withdraw the candidature of the applicant has worked itself out and the candidate cannot be refused admission subsequently for any infirmity. In the instant case, while filling up the form of preliminary examination, the candidate described himself to be an OBC/NG employee, whereas, at the time of filling up the detailed form, after the result was declared, he described himself to be a a candidate belonging to General Category. Therefore, this authority if of no help or assistance to the learned counsel for the petitioner, in view of the peculiar facts and circumstances of the instant case.

In Charles K.Skaria's case (Supra), it was held by their

Lordships of the Supreme Court that a diploma holder of a university, who completed the diploma examination and whose result having been published only after the last date for the application, could produce the certificate only before the selection, is ineligible for the admission. In the instant case, while filling up the form of preliminary examination, the candidate described himself to be an OBC/NG employee, whereas, at the time of filling up the detailed form, after the result was declared, he described himself to be a a candidate belonging to General Category. Therefore, this authority if of no help or assistance to the learned counsel for the petitioner, in view of the peculiar facts and circumstances of the instant case.

In reply, it is submitted by the learned counsel for the respondents that in the application form, the petitioner had mentioned that he belongs to the category of Other Backward Classes. The petitioner was, therefore, allowed to appear in the Preliminary Examination, subject to the condition that he will submit the supporting documents after the declaration of the result of the Final Examination. Apart from that, the petitioner was allowed to appear in the Main Examination, on provisional basis, as a candidate belonging to O.B.Cs. and Non-Gazetted Employee. On 27.4.2005, the result was declared and he was declared successful on provisional basis in the said Examination. The interview calls were issued to all the candidates on

provisional basis, who were declared successful in the Main Examination, subject to subsequent verification of their qualifications and other eligibility conditions.

The respondent-Commission insisted upon all the candidates, including the petitioner who were declared successful to fill up a detailed form, indicating their category and they were also required to attach all attested copies of the documents in support of their category and other qualifications. The petitioner filled up his detailed application form and, on scrutiny of his form, it was found that the petitioner described himself to be a candidate belonging to the General Category. It was also found by the RPSC that while filling up the application form, at the stage of Preliminary Examination, the petitioner described himself to be a candidate belonging to O.B.C. Category, but, after the declaration of the result of the Main Examination, the petitioner described himself to be a candidate belonging to the General Category. When these contradictions were noticed, a letter dated 8.6.2005 was sent to the petitioner calling his explanation as to whether he really belonged to the category of O.B.C. The petitioner did not give any information to the RPSC. Then the Deputy Secretary (Examination) made enquiries from the petitioner by calling him on the Mobile Phone Numbers given by the petitioner in his detailed application form and sought his

explanation. The petitioner stated that he has not been able to obtain certificate of the O.B.Cs. and is not in a position to submit the said Certificate, therefore, he may be treated to be a candidate belonging to the general category.

It is further submitted by the learned counsel for the respondents that in such a situation, on scrutiny of the result of the petitioner for preliminary as well as main examination, it was found that he did not qualify for interview on the basis of the cut-off marks secured by him in the main examination as a candidate belonging to the general category. In such a situation, the revised result of the petitioner was declared on 18.6.2005 and he was declared unsuccessful for the interview and information to this effect was also sent to him telegraphically on 20.6.2005.

It is also submitted by the learned counsel for the respondents that on 6.7.2005, i.e., after declaration of the result, the petitioner made a request for change of his category, but since the petitioner did not apply for change of category within the stipulated period and was not able to produce necessary certificate of O.B.C. at the time of filling up the form after the declaration of the result, it was not possible for the RPSC to accept request of the petitioner, for change of category,

at that juncture. Thus, in such circumstances, vide letter dated 12.7.2005, the petitioner was informed that now, it was not possible for the Commission to permit him to change the category.

Heard learned counsel for the parties.

It is admitted position that in the application form the petitioner has himself mentioned that he belongs to the category of Other Backward Classes (O.B.Cs.). It is also admitted position that the petitioner was allowed to appear in the main examination on provisional basis as a candidate belonging to O.B.Cs. and Non-Gazetted Employee. It is also clear that the respondent – Commission insisted upon all the candidates, including the petitioner who were declared successful to fill up a detailed form, indicating their category. The candidates were also required to attach all attested copies of the documents in support of their category and other qualifications. The petitioner filled up his detailed application form and on scrutiny of his form it was found that the petitioner described himself to be a candidate belonging to the General Category. It may be mentioned here that while filling up the application form at the stage of Preliminary Examination, the petitioner described himself to be a candidate belonging to O.B.C. Category, but,

after the declaration of the result of the Main Examination, the petitioner described himself to be a candidate belonging to the General Category. This created contradictions and the RPSC sought an explanation from the petitioner vide letter dated 9.6.2005 (Annexure R/1) that while filling up the form of preliminary examination, the petitioner described himself to be an OBC/NG employee, whereas, at the time of filling up the detailed form, after the result was declared, he described himself to be a a candidate belonging to General Category. The petitioner was asked by the Commission to furnish information within a period of seven days, failing which his case will be dealt with in accordance with the Rules. The petitioner failed to provide the actual information within the aforesaid stipulated period. Then, in these circumstances, by taking a sympathetic view, a decision was taken by the Commission that if the petitioner qualified in the preliminary examination and the main examination as a general category candidate, he may be called for interview. Pursuant to the said decision, the result of the petitioner was again looked into and it was found that the petitioner did not qualify for interview on the basis of the cut-off marks secured by him in the main examination as a candidate belonging to the general category and his revised result was declared on 18.6.2005. The petitioner was also informed about the revised result telegraphically on 20.6.2005. Then the

petitioner made a representation for change of category, which was rightly rejected by the Commission, as he did not apply for change of the category within the stipulated period. It is pertinent to mention here that once the respondent – Commission declared the revised result of the petitioner, treating him to be a candidate belonging to the O.B.C. Category, the petitioner unsuccessfully tried to change the category. This clearly reflects the conduct and craft of the petitioner that he has concealed the real fact at the time of filling up the application form. The Public Institutions, like R.P.S.C. are established under the Statute and they should strictly follow the norms laid down in the Recruitment Rules, so that the faith of the public is not shaken. If such kind of students are allowed to change the category, then there will be a flood of litigations. The R.P.S.C. has rightly not entertained the representation of the petitioner for change of category. Apart from that, Sub-rule (3) of Rule 11 of the Rules, 1999, lays down that the applications which are found to be incomplete and have not been filled in accordance with the instructions issued by the RPSC (Commission) shall be rejected by them. It further prescribes that if a candidate is allowed to take the examination, then it shall not entitle the candidate to presumption of eligibility. The Commission shall scrutinise later on the applications of such candidates only as qualify in the written and shall call only the

eligible candidates to viva-voce, if any. Similarly, sub-rule (4) of Rule 11 provides that the decision of the Commission as to the admission of a candidate to an examination, eligibility and consequent admission to viva-voce, if any, shall be final.

Thus, keeping in view all the aforesaid facts and circumstances of the case, the petitioner is not entitled to get any relief from this Court.

In the result, I do not find any merit in this writ petition. The same is, therefore, dismissed.

(R. P. VYAS), J.

scd.